COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own motion pursuant to G.L. c. 159, §§ 12 and 16, into Verizon New England Inc., d/b/a Verizon Massachusetts' provision of Special Access Services.	)	D.T.E. 01-34

OPPOSITION OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC. TO VERIZON'S PROPOSED DELAY OF HEARINGS UNTIL MAY 28-30, 2002 AND MOTION FOR INTERIM RELIEF AND ESTABLISHMENT OF EVIDENTIARY BURDEN

Introduction

AT&T Communications of New England, Inc. ("AT&T") opposes Verizon's proposal to delay the hearings in this proceeding an additional month beyond the April 29, 2002 to May 1, 2002 period, which itself represented a one month delay from the scheduled dates of March 25-27, 2002. Verizon's refusal to make its witnesses available at or near the scheduled hearing dates is yet another example of Verizon's failure to take this case seriously and a continuation of its efforts to delay a decision in this proceeding. Verizon's present request and past actions throughout the proceeding – repeated delays in answering discovery responses, inaccurate or wrong responses, and submission of erroneous testimony – clearly demonstrate the lack of priority, attention, and regulatory resources Verizon has devoted to this proceeding, resources that Verizon instead is deploying to further its private interests elsewhere. Verizon's actions in this proceeding can be characterized as inattentive and sloppy at best. AT&T submits that a more accurate description of Verizon's conduct in this proceeding is uncooperative, dilatory, and disrespectful.

Verizon's conduct in this proceeding demonstrates that Verizon's own business priorities and regulatory agenda are severely hampering the Department's goals and objectives in this case. In light of Verizon's continued refusal to cooperate in any meaningful way with the Department's investigation, AT&T respectfully urges the Department to take immediate, specific action both to provide interim relief to the parties who have been harmed by Verizon's repeated delays and to demonstrate to Verizon that its dilatory conduct will not be tolerated. Specifically, the Department should: (1) require Verizon to make its witnesses available for cross examination at hearings as soon as possible and well before the end of May; and (2) require Verizon to begin reporting its special access performance immediately and in accordance with the performance measures already adopted in New York and New Hampshire, and to continue to report until Verizon is able to demonstrate why it should not be required to do so. Otherwise, as the record and tenor of this case vividly and torturously shows, Verizon will continue to have no incentive to participate meaningfully and devote the necessary resources to the Department's investigation.

Background

In Verizon's March 19, 2002 letter to the Hearing Officer, Verizon states that the Department should effectively put its investigation of Verizon's abysmal special access performance on hold for a full month, because Verizon's witnesses are simply too busy to appear before the Department. As cause for this delay, Verizon states:

> [S]everal of Verizon's witnesses have region-wide responsibilities and, due to pre-existing commitments and unavoidable re-scheduling difficulties, they are unable to rearrange their schedules on such short notice.

Verizon March 19, 2002 letter, at 1.[1] All of the participants in this proceeding have region-wide responsibilities. Indeed, some have national responsibilities. This is no excuse. The fact is simply that Verizon currently has no incentive to participate actively and forthrightly in this case because it is directly counter to Verizon's business interests.[2]

"Possession is nine-tenths of the law." This well known expression is folk wisdom for the common person's understanding that legal proceedings typically favor the party that benefits from the status quo. In the present case, Verizon of course benefits from the status quo. Verizon has enormous ***dis***incentives for cooperating in this proceeding: not only does the proceeding itself require resources that Verizon prefers to put to use advancing its private interests in other arenas; the outcome of the proceeding is very likely to be a demonstration, based on Verizon's own data, that Verizon's on-time performance, delivery interval and installation quality are generally poor and worse for Verizon's wholesale carrier customers than for Verizon's retail end-user customers when ordering services directly from Verizon. Verizon has every incentive to delay this proceeding because the outcome may well be that Verizon must increase infrastructure, systems, personnel and training in Massachusetts in order to remedy its poor service. The problem is made worse because the party that benefits from the status quo – Verizon – is also the party with control over the information necessary to change the status quo.

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[1] The "region-wide responsibilities" and "pre-existing commitments" are, of course, Verizon's efforts to obtain Section 271 approval in all of the states in which it operates. It is no secret that Verizon has poured, and continues to pour, enormous sums of money into Section 271 efforts across its vast footprint, efforts that it sees as critical to its business plan. Indeed, Verizon's co-Chief Executive Ivan Seidenberg has stated that, notwithstanding cutbacks in Verizon's capital budgets (in all likelihood including cutbacks in infrastructure development for special access), Verizon has no intention of cutting back on resources necessary to get into the long-distance market. *See* "Verizon tightens purse strings," ZDNet (January 29, 2002), a copy of which is attached hereto.

[2] As the Department well knows, Verizon has no scheduling difficulties in producing witnesses for regulatory proceedings that serve Verizon's regulatory priorities, for example D.T.E. 99-271 or D.T.E. 01-31. However, proceedings where the outcome may serve the needs of competitive carriers, such as D.T.E. 01-20 and the instant proceeding, have been hampered by Verizon's claims of witness unavailability.

After months of Verizon foot-dragging, it is apparent that nothing will change until the Department focuses the attention of the individuals at Verizon who have the responsibility and authority for deploying regulatory resources on this investigation and making this proceeding a priority for Verizon. As a profit-making enterprise, Verizon will continue to deploy its resources consistent with its business priorities. The Department must make this case a business priority for Verizon.

The Department can do this, while at the same time furthering its own interest, as a public agency, in the development of information that will enhance public decision making: the Department can, and should, impose on Verizon immediate reporting obligations regarding all of its special access provisioning in Massachusetts (intrastate and interstate) pending the outcome of this case, and place the burden on Verizon to show cause why it should not be required to continue reporting such information.

In the past, this Department has recognized that the incentives of profit making enterprises with monopoly power can impede the implementation of public policies designed to promote the public good, and it has recognized the need to establish regulatory mechanisms to prevent such behavior. For example, in D.P.U. 94-50 (1995), the Department stated:

> A profit-maximizing firm with market power, such as NYNEX, has an incentive to price anticompetitively; therefore, it is necessary to prevent NYNEX from doing so by adopting a price floor, notwithstanding the Company's stated intent not to price anticompetitively.

Id. at 251. In the present case, Verizon has a monopoly not only over the market for special access; it has monopoly control over the information that the Department needs to regulate special access provisioning. Requiring Verizon to report that information, effective immediately and as further discussed below, pending the outcome of this case will (a) provide much of the information that the Department needs to complete its investigation of special access

provisioning and (b) eliminate the incentive that Verizon now has to delay this proceeding indefinitely.

I. THROUGH THE DISCOVERY PROCESS, VERIZON HAS DEMONSTRATED ITS REFUSAL TO TAKE THIS PROCEEDING SERIOUSLY, AND HAS DELIBERATELY CAUSED REPEATED AND UNNECESSARY DELAYS AND CONFUSION IN THE DEPARTMENT'S REVIEW.

From the outset of this proceeding, Verizon refused to accept that the Department had any authority to investigate Verizon's poor special access provisioning performance. This attitude has been vividly reflected in Verizon's approach to providing information to the Department generally, and in Verizon's repeated failures to respond to discovery requests according to the Ground Rules and in an accurate and timely manner. For example, after Department staff and the parties pointed out numerous errors in Verizon's discovery responses at the December 13, 2002 Technical Session, the Department ordered Verizon to file supplemental responses correcting the errors. On January 10, 2002, the Department amended the Ground Rules of this proceeding to impose stricter rules and penalties for failure to file timely discovery responses. In the March 6, 2002 Hearing Officer Ruling On Verizon's Request For Extension Of Time, the Department denied in part Verizon's request for an extension to file discovery and required Verizon to file outstanding discovery within two days, employing a penalty contemplated by the Amended Ground Rules.

Yet, despite commendable efforts by the Department to require Verizon to cooperate and participate meaningfully by providing complete and accurate data, Verizon's conduct has remained unacceptable. For example, in response to the first set of WCOM/ATT discovery issued to Verizon on October 17, 2001, Verizon did not file its final responses until March 8, 2002 – almost five months after the requests were issued and after multiple reprimands by the Department.

In WCOM/ATT-VZ 1-18, WorldCom and AT&T requested that Verizon provide the average installation interval offered and completed for interstate and intrastate circuits for retail and wholesale customers. This information is directly relevant to Verizon's performance in provisioning circuits to its retail customers versus its wholesale customers. On November 2, 2001, Verizon provided its first response to this request, objecting to the request as overbroad, burdensome and irrelevant. Specifically, Verizon stated that "Verizon's retail services [] are not at issue in this proceeding and not relevant to assessing Verizon MA's intrastate special access service performance."[3] Without waiving its objections, Verizon stated that it would provide some of the requested information within three to four weeks. On November 30, 2001, Verizon provided inter and intrastate retail data for January – October 2001, but provided wholesale data only for October and November 2001, stating that these two months provide the "only available data responsive to this request."[4]

At the December 13, 2001 Technical Session, the Department pointed out to Verizon that a discrepancy existed between Verizon's responses to WCOM/ATT-VZ 1-18 and 1-3, both of which provided the total number of wholesale orders completed in a month.[5] Verizon purportedly corrected the error in its 1-3 response on December 21, 2001. On January 3, 2002, Verizon filed a Supplemental Errata Reply to 1-18 providing the retail access and non-access data requested by the parties at the December 13, 2001, Technical Session. Verizon did not correct or provide monthly wholesale data in this January 3, 2002 filing. It was not until March 8, 2002, that Verizon finally provided wholesale data for the entire year 2001, and only *after*

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3 *See* WCOM/ATT-VZ 1-18 (Reply).

4 *See* WCOM/ATT-VZ 1-18 (Supplemental Reply).

5 *See* Tr. 86-87, 12/13/01 (Dugmore).

AT&T had pointed out in its Opposition to Verizon's Request for Extension of Time that Verizon had failed to complete its response to 1-18 and *after* the Department ordered Verizon to provide by March 8, 2002 the wholesale data responsive to 1-18.

This example illustrates the unnecessarily time-consuming and frustrating process that the Department and the parties have had to endure in obtaining responses to a large majority of the information requests issued to Verizon. And this example does not include the instances in which Verizon filed responses that were not based on Massachusetts-only data[6] or did not relate to special access services.[7]

It should be noted that, even through all of this smoke, Verizon's own data still demonstrate that service to its wholesale carrier customers is poorer than service to its retail end-user customers who order service directly from Verizon, even though both wholesale and retail customers are ordering precisely the same facilities. This means that, over the many months that Verizon has denied and delayed, competitive carriers and their customers have continued to suffer the consequences of Verizon's poor special access performance. Therefore, the Department must take immediate action that will both (a) signal to Verizon that this type of conduct will not be tolerated, and (b) begin to identify and help correct the root causes of Verizon's poor on-time performance, delivery intervals, and installation quality. Verizon's reporting of provisioning and maintenance performance information will be critical to this endeavor.

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6 *See* ATT/WCOM-VZ 1-2, WCOM/ATT-VZ 2-2 and DTE-VZ 4-24.

7 *See* WCOM/ATT-VZ 1-22

II. THE DEPARTMENT SHOULD REQUIRE VERIZON TO BEGIN REPORTING IMMEDIATELY ITS SPECIAL ACCESS PERFORMANCE IN ACCORDANCE WITH THE PERFORMANCE MEASURES ALREADY USED IN NEW YORK PENDING THE OUTCOME OF THIS CASE.

In her February 6, 2002, testimony filed in this case, AT&T witness Eileen Halloran recommended that the Department establish metrics and standards to measure Verizon's special access provisioning performance. *See* Halloran Direct Testimony, at 16-17. Ms. Halloran stated:

> Just as Verizon is required to submit monthly reports under the carrier to carrier metrics, Verizon should be required to report its special access performance monthly to the Department. Otherwise, Verizon will continue to be able to provide better service to itself, or to its retail customers, than to its wholesale customers – and there will be no reported statistics to reveal the discrepancies. Also, this proceeding has shown the need for the Department to be fully informed of the level of service provided by Verizon in Massachusetts. This is necessary so that over time, the Department can be alert to service deterioration and can act quickly to understand its cause and ensure corrective action.

Id. In particular, Ms. Halloran recommended the special access metrics and standards that have already been adopted by the New York Public Service Commission ("NYPSC") and attached a copy of these metrics to her testimony. She noted that "[b]ecause Verizon has been ordered to begin reporting under these metrics in New York, implementation of these metrics in Massachusetts will be swift and easy." *Id*., at 18.

Indeed, we now know that Verizon's systems are already capable of collecting the data and sorting and reporting them in accordance with the New York metrics in states other than New York. On February 5, 2002, Verizon voluntarily agreed to file with the New Hampshire Public Service Commission reports regarding performance for intra- and interstate special access services in New Hampshire, reflecting performance as measured by the same metrics as used in

New York, except for two.[8] Thus, it would impose no hardship on Verizon to require that Verizon *immediately* begin submitting monthly reports of its Massachusetts provisioning to the Department, with copies to AT&T and other interested CLECs. Imposing such a requirement now would, as stated at the outset, remove much of the incentive Verizon has had to delay this proceeding. In order to get Verizon's attention focused on this proceeding, as also noted at the outset, the Department could provide Verizon with an opportunity to show cause why it should not have to continue reporting such information. In any event, the immediate reporting of Verizon's provisioning performance would remove the enormous strain placed on the resources of the Department and the parties involved in obtaining the information and would focus those resources on the analysis necessary to arrive at the root cause for the service conditions in Massachusetts and develop remedies.

III. VERIZON SHOULD BE REQUIRED TO MAKE ITS WITNESSES AVAILABLE AT OR NEAR THE HEARING DATES SCHEDULED BY THE DEPARTMENT.

In its letter to the Department requesting a month delay in the hearing schedule, Verizon states that its proposed dates are the "earliest consecutive dates on which all four Verizon witnesses are available" and that "some Verizon witnesses may be available individually on random dates prior to May 28, 2002."[9] While not optimal, AT&T requests that the Department schedule less than three days of hearings initially, if Verizon is able to make its panel of witnesses available earlier than May 28, 2002. Further days of hearings could be scheduled subsequently as needed. Alternatively, if Verizon continues to refuse to make its panel of witnesses available at or near the Department scheduled hearing dates at the end of

[8] *See*, Stipulation Regarding Carrier-to-Carrier Guidelines Applicable To Verizon New Hampshire, ¶ 4 (dated February 5, 2002), filed in New Hampshire Docket No. DT 01-006. A copy of the stipulation is attached hereto. The Stipulation as filed includes three attachments. The copy attached hereto includes only Attachment C, which relates to the special access metrics at issue here.

April/beginning of May, Verizon should be required to make each of its witnesses available for an individual date at or near the scheduled dates. The hearings, briefing and decision in this proceeding should not be delayed simply because Verizon has chosen not to make these hearings a priority for its panel members.

AT&T is especially concerned that hearings begin near the time that the Department has scheduled them. AT&T's witness Eileen Halloran is available for individual hearing dates at that time and will remain available for hearing dates until May 10, 2002. However, after May 10, 2001, Ms. Halloran's availability is uncertain.

Conclusion

For the foregoing reasons, AT&T opposes Verizon's proposed change to the Department's schedule for hearing dates and requests that the Department immediately impose the above-described reporting requirements, pending the outcome of this proceeding. AT&T also requests that the Department require Verizon to respond to a show cause order requiring Verizon to demonstrate why it should not need to continue reporting its special access provisioning performance.

Respectfully submitted,

AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

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[9] Verizon March 19, 2002 letter, at 2.